

DOCKET FILE COPY ORIGINAL

RECEIVED

AUG 14 1997

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of

MCI TELECOMMUNICATIONS CORPORATION

Billing and Collection Services Provided  
By Local Exchange Carriers for Non-Subscribed  
Interexchange Services

RM No. 9108

**REPLY COMMENTS OF SBC COMMUNICATIONS INC.  
REGARDING PETITION FOR RULEMAKING  
OF MCI TELECOMMUNICATIONS CORPORATION**

SBC Communications Inc. ("SBC"), on behalf of Southwestern Bell Telephone Company ("SWBT"), Pacific Bell ("Pacific") and Nevada Bell ("Nevada"),<sup>1</sup> files these Reply Comments regarding the Petition for Rulemaking ("Petition") filed by MCI in the above-referenced matter. As explained below, the parties' comments, including those which take issue with the views of SBC, demonstrate that there is no reason to initiate a rulemaking. To the contrary, the comments simply reinforce those reasons which SBC advanced for not doing so. Thus, MCI's Petition should be denied.

---

<sup>1</sup> SWBT, Pacific and Nevada are referred to herein collectively as "SBC" unless otherwise indicated. Further, references in this pleading to other parties' pleadings shall refer to such parties by the acronyms used by them in their pleadings.

No. of Copies rec'd  
List ABCDE

246  
CCB

**I. THE COMMISSION SHOULD DECLINE THE MAJOR IXCs' INVITATION TO HELP THEM NEGOTIATE A BETTER BARGAIN FOR THEIR UNILATERAL DECISION TO ENTER AND HEAVILY MARKET THE CASUAL CALLING BUSINESS.**

Major IXCs do not simply make casual calling services available to the public. They spend millions of dollars on national advertising campaigns to spur demand for them. AT&T and MCI wage television, direct mail and other campaigns touting these services.<sup>2</sup> No commentor provides a specific reason why these firms should not be required to pay the billing and collection expenses caused by their own marketing and advertising decisions.

Furthermore, there is no showing in the comments that providing casual calling services is not profitable. AT&T only voices general concerns about its potential "return on sales," and vaguely recites that if it were required to direct bill non-subscribed callers, it "could expect to lose money on many invoices." Yet, AT&T agrees that as the amount billed to a given customer grows, LEC billing and collection services become less attractive and "and may be offset by other advantages of direct-billing."<sup>3</sup> No commentor suggests that SBC's billing and collection plans present costs that preclude IXCs from continuing to offer, bill and collect for their casual calling services, and in fact, for some IXCs the prices for SBC's billing and collection services will decrease. In short, the major IXCs simply want the FCC to ensure them continued healthy profit margins.

---

<sup>2</sup> See, e.g., CWI, at 1-2.

<sup>3</sup> AT&T, at 2, 3. Telco, while ostensibly supporting MCI's petition, generally concurs in MCI's view that the average monthly invoice for casual calling services is about \$6.82 and that the cost to invoice casual calling customers averages \$3.47 per invoice, i.e., the invoice cost is about 50% of the invoiced amount. Telco, at 11-12.

Certainly, there are uncollectibility concerns present in the casual calling market.<sup>4</sup>

However, uncollectibility concerns are present in every telecommunications market. Toll fraud will remain a concern in the casual calling market so long as IXCs continue to heavily market these services to the general public. But, neither the issue of toll fraud nor the IXCs' desire to maintain their profit margins is a sufficient reason for the Commission to initiate a rulemaking.

**II. MCI's PETITION ALSO SHOULD BE DENIED BECAUSE NO ONE CAN AGREE ON THE APPROPRIATE SCOPE OF A RULEMAKING PROCEEDING.**

The comments filed in this matter make it readily apparent that this docket has all the attractiveness of a snake pit. While MCI claims to request but a limited proceeding (albeit unjustified) regarding collect, third party, 10XXX, and "joint use" calling card calls, other parties ask the Commission to consider a host of additional matters. Consolidated and PTI ask the Commission to consider presubscribed (i.e., PIC'd) services.<sup>5</sup> ISA asks that the Commission consider 900 and other like services,<sup>6</sup> while Pilgrim asks the Commission to address the "full range of casual access services," including "one plus, zero plus, collect calling, calling card calling, CLASS services, \*-code services, enhanced directory assistance, N11 calling, telemessaging, teleconferencing, time, weather, pay-per-call services, Internet

---

<sup>4</sup> SBC, at 5; Telco, at 10..

<sup>5</sup> Consolidated, at 2; PTI, at 2.

<sup>6</sup> ISA, at 3.

access, and other information and enhanced services.”<sup>7</sup> Frontier complains of a carrier’s “complaint reduction program” imposing a charge per end-user complaint/inquiry.<sup>8</sup> HBS advances its “contest box” programs to solicit new customers and complains of an “excessive complaint surcharge” imposed in one carrier’s billing and collection contracts.<sup>9</sup> And, while MCI purports to request only interim relief, others argue that the goal should not be adoption of merely transitional regulations.<sup>10</sup>

Given the multiple, splintered interests reflected in the comments of the parties, the Commission and the telecommunications industry would be better served by not initiating the rulemaking sought by MCI and/or the above-referenced parties. A host of orders already address these parties’ concerns, and no good purpose would be served by revisiting them.<sup>11</sup>

---

<sup>7</sup> Pilgrim, at 2.

<sup>8</sup> Frontier, at 2.

<sup>9</sup> HBS, at 6-7.

<sup>10</sup> Pilgrim, at 6.

<sup>11</sup> See, e.g., Detariffing of Billing and Collection Services, Report and Order, 102 FCC 2d 1150 (1986) (“Detariffing Order”); Audio Communications, Inc. Petition for a Declaratory Ruling, Memorandum Opinion and Order, 8 FCC Rcd 8697 (1993) (“Audio Communications”); Polices and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards, Notice of Proposed Rulemaking, 6 FCC Rcd 3506 (1991) (“First Notice”); Second Report and Order, 8 FCC Rcd 4478 (1993) (“BNA Order”); Second Order on Reconsideration, 8 FCC Rcd 8798 (1993) (“Second BNA Recon Order”); Third Order on Reconsideration, FCC 96-38, released February 9, 1996 (“Third BNA Recon Order”); Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, First Report and Order, FCC 96-489, released December 24, 1996 (“Non-Accounting Safeguards Order”).

**III. SBC HAS NO PENDING PLANS TO CEASE OFFERING BILLING AND COLLECTION SERVICES FOR CASUAL CALLING SERVICES AND WILL CONTINUE TO MAKE BNA INFORMATION AVAILABLE.**

No party claims that SBC has told that party that SBC will no longer offer billing and collection services for casual calling services. For example, AmericaTel admits that its participation in this matter is based upon allegations raised by MCI and the pendency of the ACTA petition regarding BNA information.<sup>12</sup>

SBC has no pending plans to terminate its offering of billing and collection for IXCs' calling casual services. It has made available to casual calling providers alternative contracts for its billing and collection services and has provided these contracts to the Commission. These contracts will result in higher prices for some IXCs and lower prices for others. Moreover, even as MCI filed its petition, SBC was negotiating with it and continues to do so. If anything, it is MCI who has engaged in its own brand of "take it or leave it" negotiation by using the regulatory process as a means to trump ongoing contractual negotiations.

Finally, SBC emphasizes that SWBT, Pacific and Nevada have no plans to cease providing BNA service and that their provision of this tariffed service is not based on the fact that the call may be of the 10XXX variety. SBC agrees with the principle that all LECs should provide IXCs with sufficient customer billing information to enable them to bill and collect for their casual calling and PIC'd calls.<sup>13</sup>

---

<sup>12</sup> AmericaTel, at 2.

<sup>13</sup> SBC, at 14 & n. 27 (further citing ACTA Petition for Declaratory Ruling Regarding Access to Casual Calling Customer Billing Information, File No. Enf. 97-04, Comments of SBC Communications Inc., filed May 19, 1997 at 2).

Given these considerations, no useful purpose would be served by the Commission's initiation of a rulemaking.

#### **IV. THE TELECOMMUNICATIONS ACT OF 1996 AND COMMISSION PRECEDENT FULLY RESPOND TO COMMENTORS' BILLING AND COLLECTION CONCERNS.**

In its initial comments, SBC pointed out that the Telecommunications Act of 1996 ("Act") and the Commission's precedent already sufficiently protect the billing and collection interests of casual calling providers.<sup>14</sup> Those who oppose SBC's views either fundamentally misunderstand these protections or have determined that they no longer wish to accept them on their terms.

Section 272(c)(1) of the Act provides that in its dealings with a Section 272 long distance affiliate, a BOC "may not discriminate between that company or affiliate in any other entity in the provision of . . . goods, services, facilities and information." The Commission has concluded that billing and collection is a "service" encompassed within Section 272(c)(1) and its nondiscrimination protections.<sup>15</sup> Thus, SBC agrees with WorldCom's observation that Section 272(c)(1) and the FCC's rules implementing Section 272(c)(1) provide that a BOC may not advantage its Section 272 affiliate by providing billing and collection services only to that affiliate or by imposing more onerous rates, terms and conditions upon unaffiliated IXCs.<sup>16</sup>

---

<sup>14</sup> SBC, at 11-18.

<sup>15</sup> Non-Accounting Safeguards Order, at paras. 202, 217.

<sup>16</sup> WorldCom, at 6.

Accordingly, Section 272(c)(1) and the Commission's interpretation of it in its Non-Accounting Safeguards Order already meet IXCs' billing and collection concerns relative to casual calling. In short, the Act and the Commission have already addressed what AT&T claims are "incentives [BOCs] could not have possessed in 1985 to engage in discrimination, price squeezes and other anticompetitive behavior."<sup>17</sup>

The Commission should reject AT&T's suggestion that terms and conditions "that would make an arrangement facially unacceptable to entities not affiliated with a BOC would also violate Section 272(c)(1)."<sup>18</sup> The Commission has affirmed that BOCs must treat IXCs "in the same manner as they treat their section 272 affiliates" and has rejected requests "to interpret section 272(c)(1) more broadly to conclude that a BOC must provide unaffiliated entities different goods, services, facilities, and information than it provides to its Section 272 affiliate in order to ensure that it is providing the same quality of service or functional outcome to both its affiliate and unaffiliated entities."<sup>19</sup> The Commission correctly reasoned that to conclude otherwise would be "inappropriate as a matter of statutory construction, inconsistent with its legislative purpose, and unenforceable."<sup>20</sup> AT&T is not entitled to

---

<sup>17</sup> AT&T, at 7. Moreover, MCI has already conceded that in light of the Non-Accounting Safeguards Order, rules are already in place to implement Section 272 such that "enforcement actions are sufficient at present to secure IXC statutory rights." SBC, at 17, citing, MCI Petition at 15.

<sup>18</sup> AT&T, at 8.

<sup>19</sup> Non-Accounting Safeguards Order, at para. 202 (emphasis added).

<sup>20</sup> Id.

something different than a BOC may provide to its Section 272 affiliate, whether with respect to billing and collection services or otherwise.

It also appears that no party sufficiently addresses the fact that the Act already identifies “information sufficient for billing and collection” as a network element.<sup>21</sup> Had Congress intended to require that BOCs offer billing and collection services (whether in the casual calling service market or otherwise), it clearly knew how to do so and could have. Notwithstanding AT&T’s desires, billing and collection services may not be regarded as an unbundled network element.

Some parties take issue with some of the BOCs’ BNA rates and the Commission’s limitations on the use of BNA information. However, it is noteworthy that Vartec devoted almost its entire pleading to the availability of “customer billing information” without any contention that the BOCs’ BNA rates are unreasonable.<sup>22</sup> In addition, AmericaTel wants to prevent “denial of affordable BNA information”<sup>23</sup> but nowhere suggests that current BNA rates are unreasonable.<sup>24</sup> Were SBC’s or any other BOC’s rates unreasonable, one would have expected Vartec and AmericaTel to have so asserted. In any case, to the extent that a party believes that a particular BOC’s BNA rates are unreasonable, that party should be required to file for an investigation of those tariffs and to assume its proper burden of proof to

---

<sup>21</sup> 47 U.S.C. Section 153(29) (emphasis added).

<sup>22</sup> Vartec, at 3-7.

<sup>23</sup> ISA, at 3.

<sup>24</sup> Indeed, AmericaTel merely asks for an investigation of “whether, as MCI maintains,” the BOCs’ currently tariffed BNA rates are unreasonable. *Id.* At para. 6.



demonstrate that they are unreasonable.<sup>25</sup>

Finally, the Commission should reject out of hand ISA's request that it consider adopting rules with respect to 900 and other like services.<sup>26</sup> Requests like this were roundly rejected by the Commission just a few years ago in a matter in which the Commission found that "the billing and collection services provided by IXC's for IP's [including 900 service providers] is subject to even more competition than the billing and collection services provided by LEC's in the Detariffing Order and by AT&T in the AT&T Dial-It Order."<sup>27</sup>

With respect to telemessaging, Section 260(a)(2) of the Act requires only that LECs not discriminate in their provision of "telecommunication services." Billing and collection services are administrative services, not telecommunication services.<sup>28</sup> Accordingly, the BOCs have no duty under the Act to bill and collect for unaffiliated providers' telemessaging services, except to the extent that Section 272(c)(1) may be applicable.

---

<sup>25</sup> U S WEST, at 2.

<sup>26</sup> ISA, at 3.

<sup>27</sup> Audio Communications, at para. 22. (emphasis added). Audio Communications is also instructive to those parties in the instant proceeding who claim that the "economies of scale" that may be enjoyed by BOCs is a factor which cuts in favor of mandating that BOCs bill and collect for either casual calling services or 900 information services. In connection with the latter, the Commission rejected the argument that "economies of scale" prevent new firms from competing with larger IXC's in the provision of 900 billing and collection services," relying in part upon its Detariffing Order which "rejected this argument in the context of LEC billing and collection when we found that that service was subject to competition, and IXC economies would almost certainly be smaller than LEC economies." *Id.*, at para. 19 & n. 36. Indeed, n. 36 of the Audio Communications Order specifically referenced the availability of "clearinghouses" referred to in an prior Commission order which, so far as SBC can tell remains as a viable billing and collections vehicle for both 900 information service providers and long distance casual calling service providers as well.

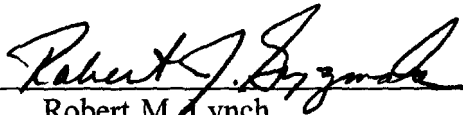
<sup>28</sup> Non-Accounting Safeguards Order, at para. 217.

**V. CONCLUSION**

Commentors whose views are contrary to those of SBC have presented no meritorious reason to take any action regarding either MCI's Petition or the plethora of additional rulemakings requested by some of the parties. MCI and other similarly situated IXC's may continue to rely upon the negotiation process, the Act and the Commission's prior precedent so as to meet their need to bill and collect for casual calling services. MCI filed its Petition to trump negotiations and to have the Commission preserve the profit margins fueled by its advertising campaigns. These considerations do not justify re-regulating services that have been detariffed for over ten years.

Respectfully submitted,

SBC COMMUNICATIONS INC.

By   
Robert M. Lynch  
Durward D. Dupre  
Michael J. Zpevak  
Robert J. Gryzmala

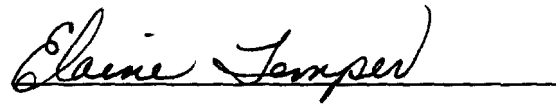
Attorneys for  
SBC Communications Inc.

One Bell Center, Room 3520  
St. Louis, Missouri 63101  
(314) 235-2507

August 14, 1997

**Certificate of Service**

I, Elaine Temper, hereby certify that the Reply Comments on Rulemaking No. 9108 of SBC Communications, Inc. have been served this 14<sup>th</sup> day of August, 1997 to the Parties of Record.

A handwritten signature in cursive script, reading "Elaine Temper", is written over a horizontal line.

Elaine Temper

August 14, 1997

MARY L BROWN  
DONNA M ROBERTS  
MCI TELECOMMUNICATIONS CORPORATION  
1801 PENNSYLVANIA AVE NW  
WASHINGTON DC 20006

ITS INC  
1919 M STREET NW RM 246  
WASHINGTON DC 20554

MICHAEL S PABIAN  
COUNSEL FOR AMERITECH  
2000 W AMERITECH CENTER DR RM 4H82  
HOFFMAN ESTATES IL 60196-1025

JAMES G PACHULSKI  
BELL ATLANTIC TELEPHONE COMPANIES  
1320 NORTH COURT HOUSE ROAD  
EIGHTH FLOOR  
ARLINGTON VA 22201

WILLIAM J BALCERSKI  
THE NYNEX TELEPHONE COMPANIES  
1095 AVENUE OF THE AMERICAS  
NEW YORK NY 10036

DAVID L MEIER  
CINCINNATI BELL TELEPHONE COMPANY  
201 E FOURTH STREET  
P O BOX 2301  
CINCINNATI OH 45201-2301

KATHRYN MARIE KRAUSE  
1020 19TH ST NW  
SUITE 700  
WASHINGTON DC 20036

RAUL R RODRIQUEZ  
LEVENTHAL SENTER & LERMAN  
COUNSEL FOR AMERICATEL CORPORATION  
2000 K STREET NW STE 600  
WASHINGTON DC 20006

JAMES H BOLIN JR  
AT&T CORP.  
295 NORTH MAPLE AVENUE RM 3247H3  
BASKING RIDGE NJ 07920

RACHEL J ROTHSTEIN  
DIRECTOR REGULATORY & INTERNATIONAL  
AFFAIRS  
8219 LEESBURG PIKE  
VIENNA VA 22182

WENDY BLUEMLING  
DIRECTOR-REGULATORY AFFAIRS  
AND PUBLIC POLICY  
THE SOUTHERN NEW ENGLAND  
TELEPHONE COMPANY  
227 CHURCH STREET  
NEW HAVEN CT 06510-1806

ROBERT J AAMOTH  
JOAN M GRIFFIN  
KELLEY DRYE & WARREN LLP  
COUNSEL FOR COMPETITIVE  
TELECOMMUNICATIONS ASSOCIATION  
1200 19TH ST NW  
STE 500  
WASHINGTON DC 20036

RONALD J JARVIS  
SWIDLER & BERLIN CHTD  
COUNSEL FOR CONSOLIDATED  
COMMUNICATIONS TELECOM SERVICES INC  
3000 K STREET NW STE 300  
WASHINGTON DC 20007

MITCHELL F BRECHER  
STEPHEN E HOLSTEN  
FLEISCHMAN AND WALSH LLP  
COUNSEL FOR DIGITAL NETWORK SERVICES  
1400 SIXTEENTH ST NW  
WASHINGTON DC 20036

MICHAEL R ROMANO  
SWIDLER & BERLIN CHTD.  
COUNSEL FOR EXCEL COMMUNICATIONS INC,  
HOLD BILLING SERVICES LTD,  
OAN SERVICES INC, INTEGRETTEL INC AND  
TELCO COMMUNICATIONS GROUP INC  
3000 K STREET NW STE 300  
WASHINGTON DC 20007

MICHAEL J SHORTLEY III  
ATTORNEY FOR FRONTIER CORPORATION  
180 SOUTH CLINTON AVENUE  
ROCHESTER NEW YORK 14646

ANTONY RICHARD PETRILLA  
SWIDLER & BERLIN CHTD  
3000 K STREET NW STE 300  
WASHINGTON DC 20007

WALTER STEIMEL JR  
HUNTON & WILLIAMS  
COUNSEL FOR PILGRIM TELEPHONE INC  
1900 K STREET NW  
SUITE 120  
WASHINGTON DC 20006

MICHAEL G HOFFMAN  
GENERAL COUNSEL & SENIOR VP  
LEGAL AND REGULATORY AFFAIRS  
3200 WEST PLEASANT RUN ROAD  
LANCASTER TX 75146

EDWIN N LAVERGNE  
JAY S NEWMAN  
GINSBURG FELDMAN AND BRESS CHTD  
1250 CONNECTICUT AVE NW  
WASHINGTON DC 20036

---

MICHAEL B FINGERHUT  
GENERAL ATTORNEY  
SPRINT  
1850 M STREET NW SUITE 1100  
WASHINGTON DC 20036

CHARLES C HUNTER  
HUNTER COMMUNICATIONS LAW GROUP  
COUNSEL FOR TELECOMMUNICATIONS  
RESELLERS ASSOCIATION  
1620 I STREET NW STE 701  
WASHINGTON DC 20006

DAVID L JONES  
PRESIDENT  
COMMUNIGROUP OF KC INC  
6950 WEST 56TH STREET  
MISSION KS 66202

CATHERINE R SLOAN  
RICHARD S WHITT  
WORLD COM  
1120 CONNECTICUT AVE NW  
SUITE 400  
WASHINGTON DC 20036